

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) UV-035 Cont.		
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on _____</p> <p>Signature _____</p> <p>Typed or printed name _____</p>	Application Number 10/684,326	Filed October 10, 2003		
	First Named Inventor Michael D. Ellis			
	Art Unit 2426	Examiner Fred H. Peng		
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table style="width: 100%; border: none;"><tr><td style="width: 50%; vertical-align: top;"><p><input type="checkbox"/> applicant/inventor.</p><p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p><p><input type="checkbox"/> attorney or agent of record. Registration number: _____</p><p><input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 <u>58,333</u></p></td><td style="width: 50%; vertical-align: top;"><p>_____ Signature</p><p>Gall C. Gotfried Typed or printed name</p><p>(212) 596-9000 Telephone number</p><p>March 16, 2009 Date</p></td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below".</p>			<p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input type="checkbox"/> attorney or agent of record. Registration number: _____</p> <p><input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 <u>58,333</u></p>	<p>_____ Signature</p> <p>Gall C. Gotfried Typed or printed name</p> <p>(212) 596-9000 Telephone number</p> <p>March 16, 2009 Date</p>
<p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input type="checkbox"/> attorney or agent of record. Registration number: _____</p> <p><input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 <u>58,333</u></p>	<p>_____ Signature</p> <p>Gall C. Gotfried Typed or printed name</p> <p>(212) 596-9000 Telephone number</p> <p>March 16, 2009 Date</p>			
<p><input checked="" type="checkbox"/> Total of <u>1</u> forms are submitted.</p>				

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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CONCISE ARGUMENT FOR WHICH REVIEW IS BEING REQUESTED

Summary of Office Action

Claims 43-86 are pending in this case. Claims 43-86 have been rejected under 35 U.S.C. § 102(e) as being anticipated by LaJoie et al. U.S. Patent Application Publication No. 2005/0015804 ("LaJoie").

Summary of Arguments

Applicants will reiterate the clear legal deficiencies in the 35 U.S.C. § 102(e) rejections of claims 43-86 in the September 18, 2008 Final Office Action ("Office Action"). In particular, applicants will show that at least one element in each of applicants' independent claims is not explicitly or implicitly taught in LaJoie, and that, as such, LaJoie is not sufficient to establish a *prima facie* case of anticipation pursuant to the requirement of 35 U.S.C. § 102(e). Applicants reserve the right to present additional arguments subsequent to the decision of the panel review.

The Rejection of Claims 43-86

Applicants' claims 43-86 are directed toward systems, methods, and computer-readable media for allowing non-guide applications to use device resources and program guide resources implemented on user television equipment. The systems and methods include, *inter alia*, a program guide application interface that receives a request directly from a non-guide application to use a device resource or a program guide resource, and that directs the request to the device resource or program guide resource.

LaJoie refers to a cable television system with set-top terminals that support implementation of television and online services. A general settings menu is provided that allows a subscriber to adjust set-top terminal settings, including a VCR timers setting. As shown in LaJoie's FIG. 11, the VCR timers setting is displayed as a menu item within the general settings menu. When the VCR timers menu item is highlighted, the right hand side of the general settings menu displays the currently set timers. FIG. 11 shows the VCR timers setting initially empty and indicates as such by displaying "(NEW...)" in the right hand side of the general settings menu. In order to adjust the VCR timers, the VCR timers menu item is first selected using a remote control to highlight cursor 255 (a display element within the general settings menu of FIG. 11 that displays the VCR Timers menu item). The SELECT key or right arrow key is then pressed to indicate the selection of the menu item. Selecting the VCR timers setting "causes cursor 255 to be removed from the display and a new cursor 257 to be displayed," (LaJoie, page 11, ¶ 112). Since the VCR timers setting was initially empty, the contents of cursor 257 are determined by the set-top box, and are shown in FIG. 11 as

"MO 23 | 27(ESPN) 8," which consists of time and channel information. These contents can be modified by pressing the SELECT and arrow keys as indicated in the figure. The final setting may then be accepted or canceled by pressing the remote control's "A" or "C" keys, respectively.

The Examiner contends that LaJoie shows all of the elements of claims 43-86. In reference to independent claims 43, 54, 65, and 76, the Examiner alleges that cursor 257 of LaJoie's FIG. 11, identified above as the display element that displays time and channel information for the VCR Timers setting, is a program guide application interface. The Examiner further alleges that cursor 257 receives a request from cursor 255, identified above as the display element that displays the VCR Timers menu item, which the Examiner contends is a non-guide application requesting to use a device resource and a program guide resource. Specifically, the Examiner contends that cursor 255 "controls VCR recording through an equivalent program guide application interface [cursor 257] as it interfaces to the program guide to instruct which program and at what time and channel to record" (Office Action, page 2).

A. LaJoie Does Not Show or Suggest a Program Guide Application Interface

Applicants respectfully submit that LaJoie does not show or suggest a program guide application interface. In contrast to the Examiner's contention, cursors 255 and 257 are not a non-guide application and a program guide application interface, respectively, but are in fact "cursors" associated with the VCR timers menu item of the general settings menu "to be displayed in the left-most column of right half 248 of the general settings menu" (LaJoie, page 11, ¶ 112). Moreover, selecting the VCR timers menu item "causes cursor 255 to be removed from the display and a new cursor 257 to be displayed" (*Id.*). In other words, cursors 255 and 257 are not separate application entities that can communicate with each other, but instead are user display elements that inform the user of the items available for selection from the general settings menu. Applicants note that, contrary to the Examiner's contention that cursor 257 is a program guide application interface, it was the position of the Examiner in the parent U.S. Patent Application No. 09/145,232 (now U.S. Patent No. 6,665,869) that "LaJoie fails to explicitly teach an application interface" (*e.g.*, November 5, 2002 Office Action, page 3, in the parent case).

B. LaJoie Does Not Show or Suggest Receiving a Request to Use a Program Guide Resource and Directing the Request to the Program Guide Resource

Applicants respectfully submit that LaJoie does not show or suggest receiving a request to use a program guide resource and directing the request to the program guide resource. In particular, LaJoie's FIG. 11 does not show cursor 257 receiving a request from cursor 255 to use a program guide resource and

directing the request to that program guide resource, as the Examiner contends and as required by applicants' claims. Specifically, FIG. 11 does not support the Examiner's contention that "VCR Timers setting is the program guide application interface as it interfaces to the program guide to show which program at what time and channel to record" (Office Action, page 3). LaJoie discusses the user initiating a request, not cursor 255, by pressing the SELECT or right arrow keys with the menu item "VCR TIMERS" highlighted, which is different from receiving a request from a non-guide application (LaJoie, page 11, ¶ 112). Moreover, LaJoie fails to show or suggest that cursor 257 receives and directs a request to display the time and channel information. Instead, once the VCR Timers setting is selected, the set-top terminal identifies the channel currently being viewed and displays that information in cursor 257 (*Id.*). As such, LaJoie fails to show or suggest that the time and channel information displayed in cursor 257 originates from a program guide resource at all, contrary to the Examiner's allegations. More specifically, just because the current time and the current channel are displayed does not necessarily imply that a program guide resource has been used, nor does LaJoie show or suggest anything to that effect. On the contrary, such data might be retrieved directly from memory using a memory resource. Thus, LaJoie does not show or suggest receiving a request to use a program guide resource and directing the request to the program guide resource using a program guide application interface, as required by applicants' claims.

C. LaJoie Does Not Show or Suggest Receiving a Request to Use a Device Resource and Directing the Request to the Device Resource

Applicants respectfully submit that LaJoie does not show or suggest receiving a request to use a device resource and directing the request to the device resource. In particular, LaJoie's FIG. 11 does not show cursor 257 receiving a request from cursor 255 to use a device resource and directing the request to that device resource, as the Examiner contends and as required by applicants' claims. Specifically, FIG. 11 does not support the Examiner's contention that the VCR timers setting "controls VCR recording through an equivalent program guide application interface" (Office Action, page 2). First, the figure does not indicate that cursor 255 requests to control a VCR device resource. As discussed above, LaJoie refers to the user selecting recording information in the VCR timers setting but does not show or suggest that cursor 255 then requests the VCR to record the requested program at the selected time. At best, in LaJoie, the selected VCR timers setting is stored in a memory after the user modifies and accepts the setting by pressing the appropriate keys on the remote control. Even then, however, the data is stored in the memory in response to the user input and not based on a request received from a non-guide application. Second, LaJoie fails to show or suggest

that cursor 257 receives and directs the request to control a VCR device resource. Instead, as just described, the user directs the request to the set-top terminal by pressing the appropriate keys on the remote control to accept the modified VCR timers setting (LaJoie, page 12, ¶ 113). Moreover, while there is no discussion of how a recording is effected in the VCR in LaJoie, there is no need to assume, as does the Examiner, that a request must be placed to control a VCR device resource. One skilled in the art would recognize that such recording may be effected by the set-top terminal, or even the VCR itself, directly polling the memory that includes the VCR timers settings, which is not the same as directing a request to a device resource, as specified in applicants' claims. Thus, LaJoie does not show or suggest receiving a request to use a device resource and directing the request to the device resource using a program guide application interface, as required by applicants' claims.

In sum, LaJoie's FIG. 11 fails to show or suggest a program guide application interface, a program guide resource, a device resource, or even receiving and directing requests from a non-guide application. In contrast to the Examiner's contention, LaJoie fails to show or suggest all of the elements of independent claims 43, 54, 65, and 76.

For the foregoing reasons, applicants submit that independent claims 43, 54, 65, and 76 are not anticipated by LaJoie. Accordingly, applicants submit that independent claims 43, 54, 65, and 76, and their respective dependent claims 44-53, 55-64, and 77-86, are allowable over the prior art of record.

Conclusion

For the foregoing reasons, applicants request that the panel issue a written decision withdrawing the rejections of claims 43-86 under 35 U.S.C. § 102(e).

Respectfully submitted,

/Gall C. Gotfried/
Gall C. Gotfried
Registration No. 58,333
Agent for Applicants
ROPES & GRAY LLP
Customer No. 75563